

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of
Time Warner Cable, Inc.

Petition For Determination of Effective Competition in:

)
)
)
) MB 13-92
) [MB 12-1]
) CSR-8778-E

Adams, MA (MA0001)
Clarksburg, MA (MA0003)
North Adams MA (MA0004)

**OPPOSITION OF THE CITY OF NORTH ADAMS, MA, TOWN OF ADAMS,
MA AND TOWN OF CLARKSBURG, MA
TO
TIME WARNER CABLE INC.'S
PETITION FOR SPECIAL RELIEF
[FOR DETERMINATION OF EFFECTIVE COMPETITION]**

The City of North Adams, the Town of Adams and the Town of Clarksburg, Massachusetts, hereby file both jointly and severally this Opposition To Time Warner Cable Inc.'s Petition For Special Relief for a determination that said communities are subject to effective competition "and therefore exempt from any rate regulation imposed pursuant to Section 623 of the Communications Act of 1934 (the "Act")." (Hereinafter, the City of North Adams and the Towns of Adams and Clarksburg, with also be referred to as the "Franchising Authorities".)

In its Petition Time Warner Cable Inc. (hereinafter also referred to as "Time Warner") contends that satisfies the "50/15" or "Competing Provider Test" in the franchise areas. Time Warner write that pursuant to Section 623(a)(2) of the Act provides that a cable system will be considered subject to effective competition (and

therefore exempt from rate regulation) under the “50/15” test if, *inter alia*, the franchise area is:

- (i) served by at least two unaffiliated multichannel video programming distributors, each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and
- (ii) the number of households subscribing to multichannel video programming other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area.¹

I. As Set Out In The Opposition Filed By The Massachusetts Department of Telecommunications and Cable, Time Warner Has Failed To Satisfy The Second Prong Of The Competing Provider Test.

As presented in the Opposition filed by the Massachusetts Department of Telecommunications and Cable (“MDTC”), Time Warner has failed to satisfy the second prong of the Competing Provider Test, and as such, the Federal Communications Commission (“Commission”) should deny the Petition, at least until Time Warner provides data that accurately calculates the DBS provider penetration rates.

As set out and described in the MDTC’s opposition, Time Warner’s calculations produced artificially inflated DBS (satellite) provider penetration rates in the Franchise Area, and thus the company failed to make the showing under the second prong of the Competing Provider Test that DBS providers met the “15 percent statutory threshold”.² This is because Time Warner includes in its penetration calculations DBS subscribers which do not qualify as “households” (more specifically “seasonal homes, vacation homes, and temporary homes”), thereby skewing the DBS penetration rates in these Franchise Areas, “potentially in excess of the 15 percent statutory threshold”. As such,

¹ 47 U.S.C. § 543(1)(1)(B), see also 47 C.F.R. § 76.905(b)(2).

² As noted, Time Warner contends that it meets the Competing Provider Test in the Franchise Areas based upon the presence of two DBS providers – DirecTV, Inc. and Dish Network, Corp.

“the FCC should not rely upon data collected in this matter to render an effective competition decision.”³

The incorrect inclusion of DBS subscriptions in seasonal homes, vacation homes, and temporary homes in Time Warner’s calculation of the DBS penetration rates for purposes of its Petition results from the fact that the Satellite Broadcasting and Communication Association (“SBCA”) methodology, does not exclude DBS subscriptions in seasonal homes, vacation homes, and temporary homes from its calculation of DBS subscribership, despite the fact that these types of housing units do not qualify as “households” under the FCC’s definition.⁴ (The United States Census Bureau’s “General Housing Characteristics: 2010” for the City of North Adams and the Towns of Adams and Clarksburg, which include a number for certain of the respective municipality’s housing for “seasonal, recreational, or occasional use” are attached hereto as Appendix A.)

The inclusion of seasonal, recreations and occasional use homes in the SBCA data and/or the failure to demonstrate the lack of inclusion of such housing in its calculation of DBS penetration should and must cause the FCC to deny the subject Petition for Special Relief in the City of North Adams and the Towns of Adams and Clarksburg.⁵ It is further

³ As stated by the MDTC in its subject Opposition to Time Warner’s Petition, the MDTC has previously provided a detailed explanation of the “fallacies” of the “SBCA’s methodology [in this regard] in the past, citing the MDTC’s Opposition “*In the Matter of Charter Comm’ns, Inc. Petition for Determination of Effective Competition in Boylston, MA, et al* CSR-8763, et al.”, which is Opposition is incorporated by reference herein by the City of North Adams.

⁴ See MDTC’s citation in footnote 24 of *In the Matter of Time Warner Entm’t-Advance/Newhouse P’ship Petition for Determination of Effective Competition in Wilson, N.C., CSR-7199-E, Memorandum Opinion & Order*, Par. 20 (rel. Mar. 16, 2011) (stating that “households” do not include “college or university dormitories, seasonal or vacation homes, or nursing homes and similar assisted living facilities.” (Citations omitted.) [Emphasis added.]

⁵ As noted by the MDTC and exemplified by FCC’s decisions, simply meeting the first prong of the Competing Provider Test is not sufficient for a finding of Effective Competition. Given the FCC’s

noted here, as it was in the MDTC's Opposition, by way of example only, that in the Town of Adams, alleged by Time Warner to have a DBS penetration rate of "15.02 percent", an inaccurate counting of only a very few households qualified or otherwise required to determine whether the DBS penetration rate is sufficient to meet the requirements for the "Competing Provider Test" (whether in the numerator or denominator as so described by the MDTC) would change the result. The same holds true, with a somewhat greater margin of error, for the City of North Adams and the Town of Clarksburg. While all margins of error cannot be eliminated in this process, errors which can reasonably be avoided by the use of appropriate methodologies, such as the use of data and calculations thereon which include seasonal homes, vacation homes, and temporary homes, can and should be eliminated or minimized, and absent such, petitions for findings of Effective Competition, such as the subject Petition of Time Warner should and must be rejected.

II. Time Warner Has Failed To Demonstrate That The Two Unaffiliated MVPDs) Offer Comparable Programming Since They Do Not Offer Northern Berkshire PEG Access Programming.

The Franchising Authorities challenges Time Warner's conclusion that it meets the first prong of the Competing Provider Test that the franchise areas are served by "at least two unaffiliated multichannel video programming distributors each of which offers comparable video programming (hereinafter referred to as "comparable programming") to at least 50 percent of the households in the franchise area[s]." [Emphasis added.] More specifically, the Town challenges and disputes the contention that the multichannel video program distributors (DBS providers "Direct TV" and Dish Network") "offer comparable

precedent and findings on the ubiquitous nature of DBS service, the first prong is likely satisfied by any cable operator petitioning the FCC for a determination of effective competition.

video programming”, since neither service provides Public, Educational and Government (“PEG”) Access programming, either in whole or in part, including that from Northern Berkshire Community Television (“NBCTC”).⁶ While the Franchising Authorities recognize that 47 C.F.R. § 76.905(g) of the Commission’s regulations defines “comparable programming as “at least 12 channels of video programming, including at least one channel of nonbroadcast service programming”, the Franchising Authorities respectfully request that Commission conclude, based on the specific facts and circumstances in these franchising areas, that the programming of these DBS providers, which does not include PEG Access programming, does not qualify as “comparable programming”.

As Time Warner is aware, in the City of North Adams and the Towns of Adams and Cheshire, PEG Access programming provided by NBCTC includes significant programming presenting and covering local and regional government, school proceedings and events; community events; arts and culture; historical events and celebrations; local sports and recreation; and many other important community activities all of which are have significant viewership by cable subscribers in these communities, on the three (3) shared PEG Access channels – Channel 15 (Public Access); Channel 16 (Educational Access); and Channel 17 (Government Access). (See, for example, the NBCTC (Northern Berkshire Community Television Corp.) Annual Report, June 6, 2013, attached hereto as Appendix B.)

The reason the unavailability of the PEG Access and local programming of the DBS providers is extremely relevant, and we believe dispositive, on the issue of whether

⁶ Northern Berkshire Community Television serves all three (3) communities represented herein in a seamless manner, without regard to municipal boundaries.

satellite programming is “comparable” to that of the cable operator, is because of the significant geographic isolation of the Northern Berkshires, including the City of North Adams and the Towns of Adams and Clarksburg, together with the fact that no other channel, including the Albany (NY), Boston or Hartford (CT) based local channels, offered by the DBS operators provides coverage of Northern Berkshire area and local events, matters and/or affairs, other than the occasional story of a more sensational nature. Absent coverage and other stories of area and local events and matters, the programming of the DBS providers can certainly not be deemed “comparable”.

Additionally, because DBS viewers are limited in their program selection to specific over-the-air broadcast markets (for instance the Boston broadcast market or the Albany broadcast market, but not both). DBS does not provide, as does the cable operator (Time Warner), programming from both over-the-air broadcast markets. This limitation is often articulated by area residents, who for instance understandably want weather programming from the nearby area of Albany, New York or are New York sports fans, but otherwise look to Massachusetts, including the Boston area, for their programming, including programming regarding government, politics, arts and culture. As such, DBS clearly does not provide “comparable programming”. Programming that does not meet the needs and interests of area residents, is not “comparable programming”.

Any attempt to define or understand “comparable programming without reference to the people it is intended and needs to serve, is meaningless, and ignores the fact that law cannot be accurately interpreted apart from reason and logic. These factual circumstances, which are indisputable, and uncommon within the Commonwealth of

Massachusetts, provides the basis for distinguishing why the lack of PEG Access/local programming by DBS providers, and therefore the failure to provide comparable programming in the Franchise areas, is distinguishable from other situations in which the FCC may have considered this general question.

It should be noted, of course, that nothing prevents either Direct TV or Dish Network from making arrangements to obtain PEG Access programming from NBCTC for its customers. Of course, within the Commonwealth of Massachusetts competitors including, but not limited to Verizon and RCN provide PEG Access programming in all the communities they serve.

The Franchising Authorities recognizes that the Commission has on a number of occasions rejected the position regarding the “comparable programming” requirement and the absence of PEG Access programming by DBS providers. Eg. *In the Matter of Comcast Cable Communications, LLC Petition for Determination of Effective Competition in Six Michigan Communities, Federal Communications Commission*. DA 11-525.⁷ However, here, in this proceeding, the Franchising Authorities (the City of

⁷ In that decision, the FCC noted that “[t]he City [Romulus, Michigan] disputes only one element of Comcast’s showing under the first part of the competing provider test. Specifically, the City points out that the DBS providers’ service does not include “Public, Educational, and Government” (“PEG”) channels,¹⁵ and the City objects that therefore DBS programming is not “comparable” to Comcast’s.¹⁶ The City’s objection lacks merit. Section 76.905(g) of our rules defines comparable programming simply as “at least 12 channels of video programming, including at least one channel of nonbroadcast service programming.” The rule does not mention PEG channels, and we have repeatedly held that the absence of PEG channels from competing service does not disqualify its programming from being “comparable” to cable operators’ for purposes of determining effective competition. [Footnote 18] The City has given us no reason to depart from those rulings, and we affirm them.” [Emphasis added.] Footnote 18 - See, e.g., Time Warner Cable Inc., 25 FCC Rcd 5457, 5466, n.69, ¶ 29 (2010), application for review pending; Cablevision of Oakland Inc., 24 FCC Rcd 1801, 1803-04, ¶¶ 6-8 (2009), application for review pending; Comcast Cable Commun., LLC, 24 FCC Rcd 1780, 1790-91, ¶ 35 (2009), application for review pending; Subsidiaries of Cablevision Systems Corp. (“Cablevision”), 23 FCC Rcd 14141, 14154, ¶ 41, stay denied, 23 FCC Rcd at 17012, 17014, ¶ 6 (2008), application for review pending.

can be viewed in whole or material part. Additionally, it is most often those residents and cable subscribers who can least afford to pay a monthly cable bill, who choose or otherwise need to purchase the basic service tier only. As evidenced by the Commission's report on cable industry prices (DA 11-284 – Report on Cable Industry Prices [for the year ending January 1, 2009]) and by the Massachusetts Department of Telecommunications and Cable's ("MDTC"), DBS providers and service have a limited competitive effect on cable rates ("[h]igher prices in the DBS subgroup contributed to the higher average for effective competition communities."), particularly basic cable rates.⁸

⁸ As explained by the Commission in its February 14, 2011 "Report on Cable Industry Prices"

3. Average prices in communities with a finding of effective competition compared with prices in on competitive communities. Over the year ending January 1, 2009, the average price of expanded basic service increased by 5.7 percent, to \$52.10, for those operators serving communities for which no effective competition finding was made ("noncompetitive communities"). The average price increased by 6.6 percent, to \$52.96, for the group of operators the Commission has found to face effective competition..

4. Chart 2 shows the average prices for expanded basic service for subgroups of communities with a finding of effective competition as of January 1, 2009. Compared to the overall average price of \$52.96 charged by operators in the effective competition communities, average prices were 1.1 percent lower (\$52.37) for incumbent operators in communities with a rival operator; 9.6 percent lower (\$47.86) for rival operators; 1.2 percent higher (\$53.61) when a finding was granted based on DBS market share exceeding the 15 percent threshold established by the statute; 1.2 percent lower (\$52.34) in areas in range of a wireless multichannel video programming distributor ("MVPD"); and 3.2 percent lower (\$51.29) where the operator met the low penetration test for effective competition as a result of serving fewer than 30 percent of households. [Emphasis added.]

5. These price comparisons differ, in some respects, from past surveys. In the past the Commission found that average rates for expanded basic service in effective competition communities generally have been lower than in communities that have not had a finding of effective competition. In contrast, in 2009, the average price for expanded basic service was \$0.86 higher in effective competition communities (\$52.96) than in noncompetitive communities (\$52.10).

17. Higher prices in the DBS subgroup contributed considerably to the higher average for effective competition communities. A higher average price among incumbent cable operators in communities where a finding of effective competition was based on the presence of a second cable operator was also a contributing factor, because the new findings occurred mostly in communities in which incumbent operators charged relatively high prices for expanded basic service.²¹ But the differential also reflects that, in contrast to past surveys, expanded basic prices are growing faster in effective competition communities than in noncompetitive communities.

With respect to the Basic rate, this is not surprising since DBS providers do not offer a basic service tier as a purchasing option. Therefore, while the provisions of Section 623(1)(1)(B) and Section 602(13) (the definition of “multichannel video programming distributor”) taken together prevent the Commission from per se excluding a “direct broadcast satellite service” from a determination of effective competition, notwithstanding DBS’s failure to act as a competitive check on cable rates, as intended, the Commission does have the authority and ability to make a determination as to what constitutes “comparable programming” in light of the intent and purpose of the rate regulation process set out in Section 623(1)(1)(B) of the Communications Act, the facts presented, and based on the presumption that “[i]n the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition.” 47 CFF 76.906.

Conclusion

For the foregoing reasons, the City of North Adams and the Towns of Adams and Clarksburg respectfully request that the Commission deny Time Warner’s Petition For Special Relief for a determination that said communities are subject to effective competition.

Respectfully submitted on behalf of
the City of North Adams, Town of
Adams, and Town of Clarksburg



William H. Solomon,
Special Cable Counsel
319 Main Street
Stoneham, Massachusetts 02180
(781) 438-4543

Dated: June 7, 2013

CERTIFICATION PURSAUNT TO 47 C.F.R. 76.6 § (a)(4)

The undersigned signatory has read the following Opposition and, to the best of my knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or in a good faith argument for the extension, modification or reversal of existing law, and it is not interposed for any improper purpose.

Respectfully submitted,

City of North Adams,
Town of Adams, and
Town of Clarksburg

By:



William H. Solomon
Special Cable Counsel
319 Main Street
Stoneham, MA 02180
(781) 438-4543

Dated: June 7, 2013

DECLARATION OF RICHARD J. ALCOMBRIGHT

I, Richard J. Alcombright, declare, under penalty of perjury that:

1. I am the Mayor of the City of North Adams, Massachusetts. I have been Mayor of the City since 2010, and prior to that time I was a city councilor for ten (10) years. I have been a resident of North Adams since 1953. As Mayor, I am cable television "Issuing Authority" (franchising authority) for the City of North Adams pursuant to Chapter 166A of the Massachusetts General Laws, and I have been involved with, and I am informed and knowledgeable regarding cable television matters, including cable licensing (franchising), regulation, and programming, including Public, Educational and Government ("PEG) Access programming. As a City Councilor and prior to my involvement with City government, I was also involved with, and informed and knowledgeable regarding, PEG Access programming and other cable television programming.
2. I have read the foregoing Opposition To Time Warner Cable Inc.'s Petition For Special Relief [For Determination of Effective Competition], and I am familiar with the contents thereof and the matters referred to therein with respect to the City of North Adams and the Northern Berkshires.
3. The material facts contained within the Opposition are true and correct to the best of my knowledge, information and belief.

Date: June 7, 2013



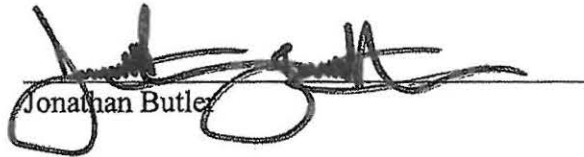
Richard J. Alcombright
Mayor, City of North Adams

DECLARATION OF JONATHAN BUTLER

I, Jonathan Butler, declare, under penalty of perjury that:

1. I am the Town Administrator for the Town of Adams, Massachusetts. I have served in that position approximately five years. As Town Administrator, I serve the Board of Selectmen of the Town of Adams who are the cable television "Issuing Authority" (franchising authority) for the Town of Adams pursuant to Chapter 166A of the Massachusetts General Laws, and I have been involved with, and I am informed and knowledgeable regarding cable television matters, including cable programming, including Public, Educational and Government ("PEG) Access programming, and the Northern Berkshire Community Television Corp..
2. I have read the foregoing Opposition To Time Warner Cable Inc.'s Petition For Special Relief [For Determination of Effective Competition], and I am familiar with the contents thereof and the matters referred to therein with respect to the Town of Adams and the Northern Berkshires.
3. The material facts contained within the Opposition are true and correct to the best of my knowledge, information and belief.

Date: June 7, 2013

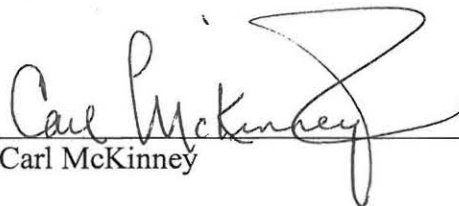

Jonathan Butler

DECLARATION OF CARL McKINNEY

I, Carl McKinney, declare, under penalty of perjury that:

1. I am the Chair of the Board of Selectmen of the Town of Clarksburg, Massachusetts. I have served on the Board of Selectmen for approximately ten (10) years. The Board of Selectmen is the cable television "Issuing Authority" (franchising authority) for the Town of Clarksburg pursuant to Chapter 166A of the Massachusetts General Laws, and I have been involved with, and I am informed and knowledgeable regarding, cable television matters, including cable programming, Public, Educational and Government ("PEG") Access programming, and the Northern Berkshire Community Television Corp.
2. I have read the foregoing Opposition To Time Warner Cable Inc.'s Petition For Special Relief [For Determination of Effective Competition], and I am familiar with the contents thereof and the matters referred to therein with respect to the Town of Clarksburg and the Northern Berkshires.
3. The material facts contained within the Opposition are true and correct to the best of my knowledge, information and belief.

Date: June 6, 2013



Carl McKinney

DECLARATION OF DAVID FABIANO

I, David Fabiano, declare, under penalty of perjury that:

1. I am the Executive Director of Northern Berkshire Community Television Corporation ("NBCTC") and have served in that position since 1995. In addition to being involved with and informed and knowledgeable regarding NBCTC and PEG Access programming in the Northern Berkshires, I am also informed regarding other cable television programming and matters in the Northern Berkshires, including the City of North Adams and the Towns of Adams and Clarksburg.
2. I have read the foregoing Opposition To Time Warner Cable Inc.'s Petition For Special Relief [For Determination of Effective Competition], and I am familiar with the contents thereof and the matters referred to therein with respect to Northern Berkshire Community Television Corporation and PEG Access, Time Warner and DBS programming in this geographic area.
3. The material facts contained within the Opposition are true and correct to the best of my knowledge, information and belief.

Date: June 7, 2013



David Fabiano

APPENDIX A

NBCTC Staff



David Fabiano
Executive Director



Paul W. Marino
Program Director



Joanne Hurlbut, PhD
Educational Access Coordinator



Nicole Brown
Office Manager



NBCTC

Northern Berkshire Community Television Corp.



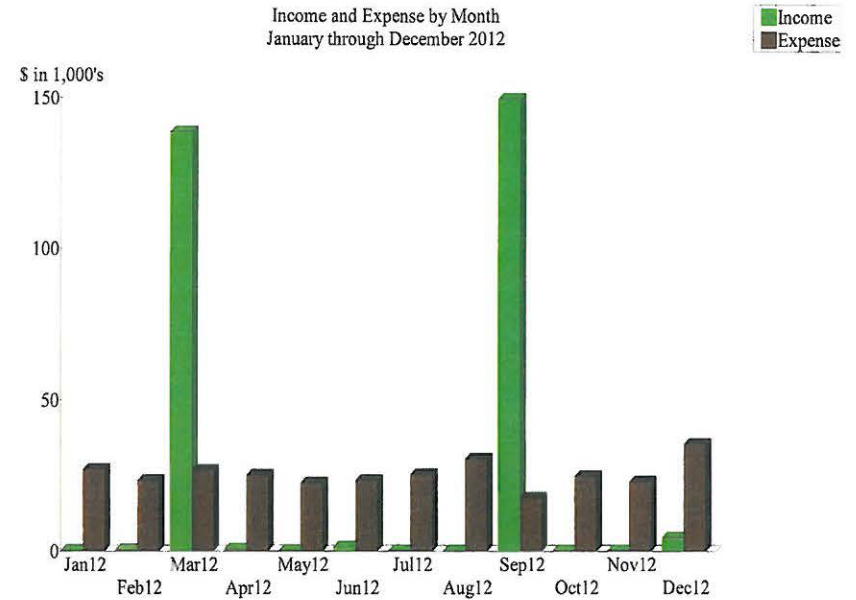
Annual Report

June 6, 2013

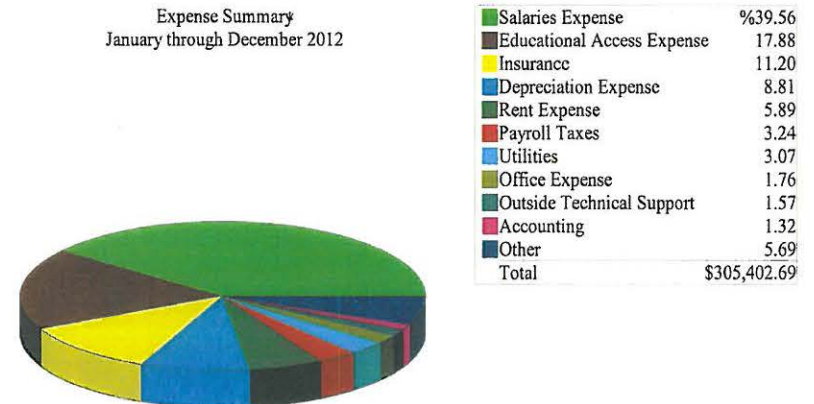


NBCTC Mission Statement

Northern Berkshire Community Television Corporation, Inc is a volunteer-based Not-for-Profit corporation formed to facilitate, encourage, and promote community involvement in the production of locally-originated television programs by offering free access to our production facilities, training programs and cable channels to all citizens of our service area.



Expense Summary
January through December 2012



Northern Berkshire Community Television Corporation, Inc.
Balance Sheet
As of December 31, 2012

	<u>Dec 31, 12</u>
ASSETS	
Current Assets	
Checking/Savings	
HoosacPinnacle Savings Account	482,051.58
Checking Account-Hoosac	65,993.06
Ed Jones - Scholarship Fund	26,076.64
Petty Cash	70.83
Total Checking/Savings	574,192.11
Other Current Assets	
Prepaid Expenses	3,051.42
Total Other Current Assets	3,051.42
Total Current Assets	577,243.53
Fixed Assets	
Leasehold Improvements	19,935.86
A/D - Leasehold Improvements	-5,074.92
Equipment	548,647.67
A/D - Equipment	-484,865.50
Total Fixed Assets	78,543.21
TOTAL ASSETS	655,786.74
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
Accounts Payable	84.02
Total Accounts Payable	84.02
Other Current Liabilities	
State Withholding Tax Payable	701.70
Federal Withholding Tax Payable	3,608.32
Total Other Current Liabilities	4,310.02
Total Current Liabilities	4,394.04
Total Liabilities	4,394.04
Equity	
Net Assets Unrestricted	650,934.85
Net Income	-8,542.15
Total Equity	651,392.70
TOTAL LIABILITIES & EQUITY	655,786.74

NBCTC Board of Directors 2012-2013

David Charon	Adams	Director	'15
Leo Pinsonneault	Cheshire	Director	'15
Colleen Putnam	North Adams	Treasurer	'14
Michael Putnam	North Adams	President	'14
Rick Bua	Clarksburg	Director	'14
Robert Allard	North Adams	Director	'15
Roy Thompson	Adams	V. Pres.	'14
Gailanne Cariddi	North Adams	Director	'15
Open	Cheshire	Director	'14
Leon Parrott	Adams	Secretary	'15



NBCTC Board of Directors 2012-2013, bottom left; Colleen Putnam (Treasurer), Sheila Cooke (retired from the Board in Fall 2012), Gailanne Cariddi. Top left; Leo Pinsonneault, Roy Thompson (V. Pres.), Bob Allard, Butch Parrott (Secretary), Mike Putnam (Pres.), and Dave Charon. Our newest Board member, Rick Bua (insert).



Mike Putnam
Board President

First up, I would like to Thank Dave Charon for leading our group this past four years. Dave put in some tireless work in running the Board of Directors smoothly during this time.

NBCTC has been in operation for about 18 years now. But our Board of Directors started 20 years ago on a snowy January meeting which was held at McCann School. McCann was in the original plans to house NBCTC, with the McCann students using the equipment during the day. However, the school's studio space was too small for our use. We looked at several other locations before finding our home in Heritage State Park.

Things are looking up for NBCTC in the coming year. We are still in the process of trying to get an LPFM station going, as I said at the After Christmas Party. The window for applying for an FM license opens in October. Dave & I have been working on this project. We recently visited a low power FM station in Greenfield.

This Fall, Dave & I will be going to New Hampshire to check out a new camera from JVC that uses memory cards instead of tape. This camera will also be able to send a video stream & an IP stream simultaneously. We have to make it a point to find additional ways that people get NBCTC's & your projects to a larger audience.

In closing, I would like to Thank each & everyone of you. Producers, camera operators, directors, and staff for a very successful year of programming. Each year, we seem to grow bigger & better.

Recently some of our producers have come under fire by our elected officials for things said on their programs. Please remember that you have the complete support of the Board & staff. You have the First Amendment behind you also. No one here deserves to be chastised in letters to the Editor by any elected officials. As a private citizen, they can say anything. But as elected officials, they cannot use their forum to attack private citizens. We will be addressing this with officials in the future. It is obvious they need some education as to what Public Access is all about. Keep up the good work and I hope you all have a safe and joyous summer.

The Year in Review

The following is a partial list of the highlights of the past year.

- This Spring NBCTC had three interns, two from Bart and one from MCLA, working within our studio and various remote locations, such as the Northern Berkshire Relay For Life.
- NBCTC Educational Access Channel 16 reached a programming high this Spring, with over 50 programs per week being aired.
- The Month of May has seen the widest variety of programming on Channel 16, from youth sports coverage, to high school news shows, special events, etc.
- NBCTC has changed our website to become more user friendly.
- Board President Mike Putnam, Board Treasurer Colleen Putnam, and Executive Director David Fabiano attended a Mass Access Conference in October held at Foxboro stadium in Foxboro, MA.
- The Hoosac Valley High School and Drury High School girls basketball teams played in the Western Mass Finals at the Cage at Umass on March 9th and NBCTC was there to catch the action!
- NBCTC followed the HVHS girls basketball team to the Worcester DCU Center.
- NBCTC and technicians from Time Warner conducted tests on new equipment which will improve signal quality and site flexibility on live remote productions.
- Board President Mike Putnam and Executive Director Dave Fabiano traveled to Greenfield Community Television to tour their LPFM radio facility.
- We further expanded our collaborative efforts with other local Public Access stations on environmental, classroom, and athletic activities.

NBCTC Programs

2012-2013

Educational Access

1350 West Street (BCC)
 Adams/Cheshire Regional School District Budget Mtgs
 Adams Free Library Programming
 American Legion Student Programming
 Artists of North Berkshire
 Berkshire Compact "Reach Out for Education"
 Bart Charter Public School Graduation
 Bart "Break the Silence"
 Brayton After School & Summer Programs
 Brayton Celebrations & Special Programming
 Brayton Concerts such as "FLAME"
 Cheshire Elementary Concerts & Programming
 Christmas Brook Figure Skating Show
 Clarksburg School's Holocaust Exhibit
 Clarksburg School Committee Meetings
 "Cotton and Race"
 C.T. Plunkett's Art Show, Read Across America
 C.T. Plunkett Kindergarten class activities/trips
 DTV - "Drury Hot Spot" Drury High School
 Drury Graduation, Holiday Show
 Drury "Proposals for a Better North Adams"
 Drury Sports- soccer, basketball (boys & girls), football, baseball, and softball (Drury vs. HV)
 Eagle Sports Weekly
 Greylock Science Programs
 Gwendolyn, The Graceful Pig
 Hoosac Valley Graduation & Concerts
 Hoosac Valley Productions, Honors & ACE Programs
 Hoosac Valley High School sports—soccer, basketball (boys & girls), and football, cross country, hockey
 Hoosac Valley Today
 McCann Football
 McCann Graduation
 MCLA Green Living Seminar Series
 MCLA special lecture programming
 MCLA College Roundtable & Graduation
 MMTV and NASA 360
 North Adams Public Library's "Music at the Mansion" Series
 North Adams Public Schools concerts
 North Adams Public Schools (NAPS) Bullying Programming
 Olli Lecture Series
 Shakespeare & Company School Play Series
 Spirit of Art
 St. Stanislaus' School Productions
 Student produced PSAs
 Sullivan School's Memorial Day Program
 Susan B. Anthony Museum Lecture Series
 The Northern Berkshire Top Ten Countdown with Ryan Pause
 The Garage
 University of Massachusetts Concerts
 Williams College Sports
 Youth Enrichment
 Youth Football



David Fabiano
Executive Director

Northern Berkshire Community Television Corporation is about to enter our eighteenth year as a fully functional Public, Educational and Governmental Access Center. There have been numerous changes in that time; in our facility, our equipment, amount of programming and number of volunteers. One thing that has remained the same however is our mission: to facilitate, encourage, and promote community involvement in the production of locally-originated television programs by offering free access to our production facilities, training programs and cable channels to all citizens of our service area. I am proud that NBCTC has continued to meet the goals and objectives of our mission through almost two decades of growth in the quantity and quality of programs produced and virtually unprecedented change in television production technology.

When NBCTC started in September of 1995 we produced a handful of programs and covered one municipal meeting in an average week. Today we typically produce dozens of Public, Education and Government access programs each week and cover several hours worth of municipal meetings. Many of these programs are produced live, many are done on location some with multiple cameras and full crews. We often are live, on location and have multiple cameras and full crews! NBCTC has been able to manage this growth thanks to our dedicated staff and the many hardworking volunteers who consistently step up to the plate to help out when needed. I can't emphasize enough the roll that our volunteers play in helping NBCTC meet our goals.

The technological changes that have taken place in television production since NBCTC began have been nothing less than mind boggling. Some technologies have emerged and become obsolete since we first opened our doors. We will most likely never again buy a camera that uses video tape. Non-linear editing, which cost over one hundred thousand dollars when it first appeared in the mid 90's, now comes as a standard app for any smartphone. Our staff and Board have been working to try to stay ahead of this curve. We have been and will continue to be evaluating equipment that will help us better serve our communities by growing our capabilities. Equipment to give us more flexible and reliable options for live remote production, playback improvements which will help with a more robust and consistent presence on the web and editing equipment that will allow rapid transfer from camera to editor to playback server without the need for tape or DVD are just some of the new technologies that we have been exploring.

In addition to these new technologies NBCTC has been moving forward on obtaining a FCC license for a Low Power FM (LPFM) radio station and we are hoping to hear soon on the status of the new leased access channel. New horizons and new challenges are certainly in store for Northern Berkshire Community Television and given our history of meeting our goals and fulfilling our mission I have no doubt that together we will rise to the occasion.

Northern Berkshire Community Television Corporation

Serving the communities of North Adams, Adams, Cheshire and Clarksburg.
Offices and Studio Located at: Heritage State Park, Bldg # 6, North Adams
Hours of operation: Mon.-Fri. 9:00 AM - 9:00 PM, Sat. 8:00 AM - 2:00 PM
Total paid Members: 61 Individuals and families



Public Access Channel 15

Programming is produced and directed almost entirely by community volunteers from the NBCTC service area. Some programming is submitted from other access centers in Berkshire County.

Total Shows Run: 30 monthly or weekly series
3 monthly or weekly call-in
15 One Time Only shows

Total Active Volunteers: 45
Total Volunteer Hours: over 6,000
Alphanumeric Bulletin Board Pages: 800 annually



Educational Access Channel 16

Total Student and Faculty Volunteers: 170
Total Volunteer Hours: 3325
Total Shows Run: 1957
Total Program Hours: 2639
Alphanumeric Bulletin Board Pages: 30 slides/day



Government Access Channel 17

Offering live and taped government programming from various locations in our four communities and Boston, plus talk shows on diverse subjects.

Talk Shows: 4
Live Call-In Shows: 6
Public Meetings: 15
Adams Selectmen Meetings: -1st & 2nd Wednesdays
Clarksburg Selectmen Meetings - 2nd & 4th Wed.
North Adams City Council- 2nd & 4th Tuesdays
Alphanumeric Bulletin Board Pages: 40 annually



Paul W. Marino

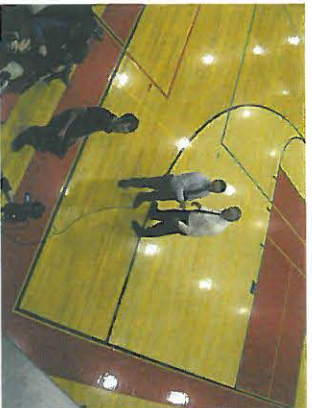
Program Director

It's been quite a year at NBCTC! We've lost one show, and got two to take its place. We had a hard drive crash while Dave was away, and Eric Buddington and I were able to figure it out and get it fixed before Dave got back. We had three interns, all of whom fit in like a hand in a glove. They easily picked up on the dynamics of our facility and of the staff. Scariest of all, they all understood and *appreciated* my sense of humor! All three show enormous promise as directors and editors; we expect great things of them. But better still, two of them live close by; one in Adams and one in Lanesboro. They might be interested in coming in on their own. We hope so!

Something else I feel obliged to brag about is what I do with the bulletin boards for Channels 15 and 17, but especially for Channel 15. I take time to create eye-catching announcements that say what needs to be said, even if it's only minimally. So why am I mentioning this? Those announcements get results. I've heard from people who send in announcements how much they like what I've done with them, and I was also approached by someone from Adult Basic Education; she told me that they got someone to sign up for their GED program *because* of the notice on Channel 15. That makes me proud-not so much for myself- but of NBCTC, because as a group, we make a difference in the community.

Okay, I say this every year, and I still mean it, from the very core of my being. Here at NBCTC, we produce the best TV in the universe. Why? Because it's locally produced for local audiences. Because our viewers are willing to pay what they're told is extra to get it. Because our producers have a loyal following that doesn't exist in commercial television. As we go looking for new members and producers, it's important that we remember this.

So is you know someone you think would make a good producer, either because of their personality or because they have a message they need to get out, don't just encourage them to do it. Sure, encourage them, but tell them what terrific TV we produce here. Tell them that they won't produce on their own unless they want to. Public Access TV is a collaborative effort, and we collaborate like nobody's business. Tell them to come in and talk to us, so we can help them develop their ideas. And don't forget to tell them that they'll be part of a family; a family that produces the best TV in the universe. Because that's the truth.



APPENDIX B

U.S. Census Bureau

AMERICAN
FactFinder



QT-H1

General Housing Characteristics: 2010

2010 Census Summary File 1

NOTE: For information on confidentiality protection, nonsampling error, and definitions, see <http://www.census.gov/prod/cen2010/doc/sf1.pdf>.

Geography: North Adams city, Berkshire County, Massachusetts

Subject	Number	Percent
OCCUPANCY STATUS		
Total housing units	6,752	100.0
Occupied housing units	5,868	86.9
Vacant housing units	884	13.1
TENURE		
Occupied housing units	5,868	100.0
Owner occupied	3,118	53.1
Owned with a mortgage or loan	2,000	34.1
Owned free and clear	1,118	19.1
Renter occupied	2,750	46.9
VACANCY STATUS		
Vacant housing units	884	100.0
For rent	410	46.4
Rented, not occupied	4	0.5
For sale only	91	10.3
Sold, not occupied	24	2.7
For seasonal, recreational, or occasional use	71	8.0
For migratory workers	0	0.0
Other vacant	284	32.1
TENURE BY HISPANIC OR LATINO ORIGIN OF HOUSEHOLDER BY RACE OF HOUSEHOLDER		
Occupied housing units	5,868	100.0
Owner-occupied housing units	3,118	53.1
Not Hispanic or Latino householder	3,087	62.6
White alone householder	3,024	61.5
Black or African American alone householder	17	0.3
American Indian and Alaska Native alone householder	7	0.1
Asian alone householder	14	0.2
Native Hawaiian and Other Pacific Islander alone householder	1	0.0
Some Other Race alone householder	2	0.0
Two or More Races householder	22	0.4
Hispanic or Latino householder	31	0.5
White alone householder	18	0.3
Black or African American alone householder	1	0.0
American Indian and Alaska Native alone householder	0	0.0
Asian alone householder	1	0.0
Native Hawaiian and Other Pacific Islander alone householder	0	0.0
Some Other Race alone householder	7	0.1
Two or More Races householder	4	0.1
Renter-occupied housing units	2,750	46.9
Not Hispanic or Latino householder	2,688	45.5

*

Subject	Number	Percent
White alone householder	2,524	43.0
Black or African American alone householder	67	1.1
American Indian and Alaska Native alone householder	13	0.2
Asian alone householder	13	0.2
Native Hawaiian and Other Pacific Islander alone householder	2	0.0
Some Other Race alone householder	1	0.0
Two or More Races householder	48	0.8
Hispanic or Latino householder	82	1.4
White alone householder	50	0.9
Black or African American alone householder	3	0.1
American Indian and Alaska Native alone householder	1	0.0
Asian alone householder	0	0.0
Native Hawaiian and Other Pacific Islander alone householder	0	0.0
Some Other Race alone householder	24	0.4
Two or More Races householder	4	0.1

X Not applicable.

Source: U.S. Census Bureau, 2010 Census.

Summary File 1, Tables H3, H4, H5, and HCT1.

U.S. Census Bureau

AMERICAN
FactFinder



QT-H1

General Housing Characteristics: 2010

2010 Census Summary File 1

NOTE: For information on confidentiality protection, nonsampling error, and definitions, see <http://www.census.gov/prod/cen2010/doc/sf1.pdf>.

Geography: Adams town, Berkshire County, Massachusetts

Subject	Number	Percent
OCCUPANCY STATUS		
Total housing units	4,371	100.0
Occupied housing units	3,907	89.4
Vacant housing units	464	10.6
TENURE		
Occupied housing units	3,907	100.0
Owner occupied	2,390	61.2
Owned with a mortgage or loan	1,547	39.6
Owned free and clear	843	21.6
Renter occupied	1,517	38.8
VACANCY STATUS		
Vacant housing units	464	100.0
For rent	171	36.9
Rented, not occupied	6	1.3
For sale only	39	8.4
Sold, not occupied	7	1.5
For seasonal, recreational, or occasional use	34	7.3
For migratory workers	0	0.0
Other vacant	207	44.6
TENURE BY HISPANIC OR LATINO ORIGIN OF HOUSEHOLDER BY RACE OF HOUSEHOLDER		
Occupied housing units	3,907	100.0
Owner-occupied housing units	2,390	61.2
Not Hispanic or Latino householder	2,373	60.7
White alone householder	2,349	60.1
Black or African American alone householder	4	0.1
American Indian and Alaska Native alone householder	1	0.0
Asian alone householder	5	0.1
Native Hawaiian and Other Pacific Islander alone householder	1	0.0
Some Other Race alone householder	1	0.0
Two or More Races householder	12	0.3
Hispanic or Latino householder	17	0.4
White alone householder	10	0.3
Black or African American alone householder	2	0.1
American Indian and Alaska Native alone householder	1	0.0
Asian alone householder	0	0.0
Native Hawaiian and Other Pacific Islander alone householder	0	0.0
Some Other Race alone householder	3	0.1
Two or More Races householder	1	0.0
Renter-occupied housing units	1,517	38.8
Not Hispanic or Latino householder	1,503	38.5

*

Subject	Number	Percent
White alone householder	1,457	37.3
Black or African American alone householder	12	0.3
American Indian and Alaska Native alone householder	3	0.1
Asian alone householder	6	0.2
Native Hawaiian and Other Pacific Islander alone householder	0	0.0
Some Other Race alone householder	1	0.0
Two or More Races householder	24	0.6
Hispanic or Latino householder	14	0.4
White alone householder	10	0.3
Black or African American alone householder	1	0.0
American Indian and Alaska Native alone householder	0	0.0
Asian alone householder	0	0.0
Native Hawaiian and Other Pacific Islander alone householder	0	0.0
Some Other Race alone householder	2	0.1
Two or More Races householder	1	0.0

X Not applicable.

Source: U.S. Census Bureau, 2010 Census.

Summary File 1, Tables H3, H4, H5, and HCT1.

1 Community Facts 2 Table Viewer

DP-1

Profile of General Population and Housing Characteristics: 2010
2010 Demographic Profile Data

BACK TO COMMUNITY FACTS

Legend:

☒ Hide town and columns ☒ Hide data categories ☒ Hide column labels ☒ Hide row labels ☒ Sort and display descending ☒ Filter towns

Note: This is a modified view of the original table.

NOTE: For more information on confidentiality protection, nonsampling error, and definitions, see <http://www.census.gov/prod/cen2010/doc/dp1.pdf>.

Geography: Clarksburg town, Berkshire County, Massachusetts

Subject	Number	Percent
SEX AND AGE		
Total population	1,702	100.0
Male population	874	51.4
Female population	828	48.6
RACE		
Total population	1,702	100.0
Race alone or in combination with one or more other races: [4]		
White	1,696	99.6
Black or African American	15	0.9
American Indian and Alaska Native	3	0.2
Asian	2	0.1
Native Hawaiian and Other Pacific Islander	0	0.0
Some Other Race	1	0.1
HISPANIC OR LATINO		
Total population	1,702	100.0
HISPANIC OR LATINO AND RACE		
Total population	1,702	100.0
RELATIONSHIP		
Total population	1,702	100.0
HOUSEHOLDS BY TYPE		
Total households	675	100.0
HOUSING OCCUPANCY		
Total housing units	715	100.0
Occupied housing units	675	94.4
Vacant housing units	40	5.6
For rent	2	0.3
Rented, not occupied	0	0.0
For sale only	9	1.3
Sold, not occupied	4	0.6
For seasonal, recreational, or occasional use	9	1.3
All other vacants	16	2.2
Homeowner vacancy rate (percent) [8]	1.5	(X)
Rental vacancy rate (percent) [9]	2.6	(X)
HOUSING TENURE		
Occupied housing units	675	100.0
Owner-occupied housing units	601	89.0
Population in owner-occupied housing units	1,535	(X)
Average household size of owner-occupied units	2.55	(X)
Renter-occupied housing units	74	11.0
Population in renter-occupied housing units	163	(X)
Average household size of renter-occupied units	2.20	(X)

X Not applicable.

[1] Other Asian alone, or two or more Asian categories.

[2] Other Pacific Islander alone, or two or more Native Hawaiian and Other Pacific Islander categories.

[3] One of the four most commonly reported multiple-race combinations nationwide in Census 2000.

[4] In combination with one or more of the other races listed. The six numbers may add to more than the total population, and the six percentages may add to more than 100 percent because individuals may report more than one race.

[5] This category is composed of people whose origins are from the Dominican Republic, Spain, and Spanish-speaking Central or South American countries. It also includes general origin responses such as "Latino" or "Hispanic."

[6] "Spouse" represents spouse of the householder. It does not reflect all spouses in a household. Responses of "same-sex spouse" were edited during processing to "unmarried partner."

[7] "Family households" consist of a householder and one or more other people related to the householder by birth, marriage, or adoption. They do not include same-sex married couples even if the marriage was performed in a state issuing marriage certificates for same-sex couples. Same-sex couple households are included in the family households category if there is at least one additional person related to the householder by birth or adoption. Same-sex couple households with no relatives of the householder present are tabulated in nonfamily households. "Nonfamily households" consist of people living alone and households which do not have any members related to the householder.

[8] The homeowner vacancy rate is the proportion of the homeowner inventory that is vacant "for sale." It is computed by dividing the total number of vacant units "for sale only" by the sum of owner-occupied units, vacant units that are "for sale only," and vacant units that have been sold but not yet occupied, and then multiplying by 100.

[9] The rental vacancy rate is the proportion of the rental inventory that is vacant "for rent." It is computed by dividing the total number of vacant units "for rent" by the sum of the renter-occupied units, vacant units that are "for rent," and vacant units that have been rented but not yet occupied, and then multiplying by 100.

Source: U.S. Census Bureau, 2010 Census.

CERTIFICATE OF SERVICE

I, William H. Solomon, do hereby certify on this 7th day of June, 2013 that a true and correct copy of the foregoing Opposition Of The City of North Adams, MA; Town of Adams, MA; and Town of Clarksburg, MA To Time Warner Cable Inc.'s Petition For Special Relief [For Determination of Effective Competition] has been sent via U.S. mail, postage prepaid (and by electronic mail) to:

Craig A. Gilley, Esq.
Edwards Wildman Palmer LLP
1255 23rd Street, N.W.
Washington, D.C. 20006
CGilley@edwardswildman.com

with a copy sent by first class U.S. mail and e-mail to:

Steven A. Broekaert, Esq.
Media Bureau Policy Division
Federal Communications Commission
445 12th Street, S.W., Room 4-A865
(Steven.Broeckaert@fcc.gov)

and with copies sent by first class U.S. mail to the Commonwealth of Massachusetts, Department of Telecommunications and Cable, Attention: Catrice C. Williams, 1000 Washington Street, Suite 820, Boston, MA 02118-6500.



William H. Solomon